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HOUSE RESEARCH ORGANIZATION

daily floor report

Thursday, July 27, 2017

85th Legislature, First Called Session, Number 7

The House convenes at 10 a.m.

Three bills are on the General State Calendar for second-reading consideration today:

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| HB 2 by Gonzales | Repealing budget riders related to medical and psychology boards | 1 |
| HB 7 by Phelan | Establishing a tree planting credit to offset tree mitigation fees | 3 |
| HB 13 by Capriglione | Requiring physicians, hospitals to report abortion complications | 6 |

The following House committees are scheduled to hold public hearings today: Appropriations in Room E1.030 at 8 a.m.; Transportation in Room E2.012 at 8 a.m.; and General Investigating and Ethics in Room E1.010 at 10 a.m. or on adjournment.



Dwayne Bohac
Chairman
85(1) - 7

SUBJECT: Repealing budget riders related to medical and psychology boards

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 22 ayes — Zerwas, Longoria, Ashby, G. Bonnen, Capriglione, Cospers, S. Davis, Dean, Giddings, Gonzales, Howard, Miller, Muñoz, Perez, Raney, Roberts, J. Rodriguez, Rose, Sheffield, VanDeaver, Walle, Wu

0 nays

5 absent — Dukes, González, Koop, Phelan, Simmons

WITNESSES: For — (*Registered, but did not testify*: Gregory Hansch, National Alliance on Mental Illness (NAMI) Texas)

Against — None

On — (*Registered, but did not testify*: Ken Levine, Sunset Advisory Commission)

BACKGROUND: In the fiscal 2018-19 general appropriations act, Rider 6 following the appropriations to the Texas Medical Board and Rider 2 following the appropriations to the Texas State Board of Examiners of Psychologists make fiscal 2019 funding for each board contingent on the enactment during the 85th Legislature's regular session of legislation to continue the boards. The regular session ended without the Legislature authorizing the continuation of these boards.

DIGEST: CSHB 2 would repeal two riders in the fiscal 2018-19 general appropriations act that make fiscal 2019 funding for the Texas State Board of Examiners of Psychologists and the Texas Medical Board contingent on the enactment during the 85th Legislature's regular session of legislation to continue the boards.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the special session.

HB 2
House Research Organization
page 2

| | |
|--------------------|--|
| SUPPORTERS SAY: | CSHB 2 is necessary to continue funding for the Texas Medical Board and the Texas State Board of Examiners of Psychologists. During the first called session, each chamber has approved a bill authorizing the continuation of both boards (HB 1 by Gonzales and SB 20 by V. Taylor), but two contingency riders in the fiscal 2018-19 budget must be repealed to ensure that the boards continue receiving funding for the coming fiscal biennium. This bill would repeal those riders to ensure that both boards receive the funds appropriated to support their operations until September 1, 2019, the new Sunset date authorized in HB 1 and SB 20. |
| OPPONENTS SAY: | No apparent opposition. |
| NOTES: | CSHB 2 differs from the bill as introduced by making the caption the same as the Senate companion bill, SB 60 by V. Taylor, which was approved by the Senate on July 20. |

SUBJECT: Establishing a tree planting credit to offset tree mitigation fees

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Alvarado, Leach, Bernal, Isaac, J. Johnson, Zedler

0 nays

1 absent — Elkins

WITNESSES: For — Keith Mars, City of Austin; David Lehde, Dallas Builders Association; Scott Norman, Texas Association of Builders; Chance Sparks, Texas Chapter of American Planning Association; Mary Dennis, Texas Municipal League; Craig Brown; (*Registered, but did not testify*: Tom Tagliabue, City of Corpus Christi; Philip Erwin and Bertram Vandenberg, City of Dallas; Jon Weist, City of Irving; Priscilla Files, Galveston Island Tree Conservancy; David Glenn, Home Builders Association of Greater Austin; Geoffrey Tahuahua, Real Estate Council of Austin; Kyle Jackson, Texas Apartment Association; Daniel Gonzalez and Julia Parenteau, Texas Association of Realtors; Bruce Brandel, David Englund, and Gardner Pate, Texas Building Owners and Managers Association (BOMA); Val Perkins, Texas Community Association Advocates; Chloe Lieberknecht, The Nature Conservancy; Elisabeth Hensley; Karisa Johnson; David King; Brad Parsons; Ginger Turner)

Against — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings; Eileen Altmiller and Todd Ruge, City of Buda; Guadalupe Cuellar, City of El Paso; John Thomaidas, City of San Marcos; Kelly Davis, Save Our Springs Alliance; Craig Nazor, Sierra Club, Austin Regional Group; Charlie Bonner, Elizabeth Doyel, and Sonia Woiton, Texas League of Conservation Voters; Thais Perkins, TreeFolks; and six individuals)

On — Jocelyn Murphy, City of Fort Worth; Michael Shannon, City of San Antonio; James Cannizzo, U.S. Army, Fort Sam Houston, Camp Bullis, and Camp Stanley; (*Registered, but did not testify*: Brent Luck, American Society of Landscape Architects-Texas Chapter; Cheri Cuellar, City of

Fort Worth; Beth South, City of West Lake Hills; Jackie Cole, Galveston Island Tree Conservancy; Cyrus Reed, Lone Star Chapter Sierra Club; James Rooni, Texas A&M Forest Service; Andrew Dobbs, Texas Campaign for the Environment; Rhonda McCollough, West Lake Hills City Council; and nine individuals)

DIGEST: HB 7 would require a municipality that imposed a tree mitigation fee for tree removal necessary for development or construction on a person's property to allow that person to apply for a tree planting credit to offset the fee. The amount of the credit would be at least 50 percent of the assessed tree mitigation fee and be applied in the same manner.

To qualify for a credit, a tree would have to be:

- planted on property where the tree mitigation fee was assessed or on property agreed upon by the municipality and the property owner; and
- at least two inches in diameter at the point on the trunk 4.5 feet above ground.

As long as a municipality provided a tree planting credit to offset the tree mitigation fee, the bill would not affect the municipality's ability to determine:

- the size, number, and type of trees that would need to be planted to receive a credit, except as provided by the bill's credit qualification provisions;
- the requirements for tree removal and corresponding tree mitigation fees; or
- the requirements for tree planting methods and management practices to ensure that the tree grew to anticipated height at maturity.

The bill would not apply to property within five miles of an active federal military base in use as of the bill's effective date.

The bill would take effect December 1, 2017, and would apply only to tree

mitigation fees assessed on or after that date.

**SUPPORTERS
SAY:**

HB 7, by allowing for the offsetting of tree mitigation fees with a tree planting credit, would address concerns that fees imposed for tree removal by municipalities negatively impact property rights and the ability of developers and builders to provide affordable housing. High tree mitigation fees can increase housing prices and building costs, potentially making projects infeasible or driving up the price of new homes beyond what many people can afford, particularly first-time homebuyers. With the proposed tree planting credit, HB 7 would incentivize property owners and developers to plant more trees to receive credits against mitigation fees, resulting in more affordable housing and more trees.

**OPPONENTS
SAY:**

HB 7 would not sufficiently protect private property rights nor address the issue of municipal micromanagement of private property. Although HB 7 is well intentioned, it would in effect protect the improper practice of local governments regulating trees on private property. The Legislature should propose instead a measure to correct local government overreach and protect private property owners, as the governor noted in his veto message on SB 744 by Kolkhorst, a similar bill passed during the 85th Legislature's regular session.

SUBJECT: Requiring physicians, hospitals to report abortion complications

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 8 ayes — Cook, Geren, Guillen, K. King, Kuempel, Meyer, Oliveira, Smithee

3 nays — Giddings, Farrar, E. Rodriguez

2 absent — Craddick, Paddie

WITNESSES: For — Kyleen Wright, Texans for Life; (*Registered, but did not testify:* Jenny Andrews, Melissa Duncan, and Joe Pojman, Texas Alliance for Life; John Seago, Texas Right to Life; Jonathan Saenz, Texas Values; Nicole Hudgens, Texas Values Action; Jennifer Allmon, Texas Catholic Conference of Bishops; Thomas Parkinson)

Against — Blake Rocap, NARAL Pro-Choice Texas; (*Registered, but did not testify:* Rebecca Marques, ACLU of Texas; Juliana Kerker, American Congress of Obstetricians and Gynecologists - Texas District; Jane McFarland, League of Women Voters of Texas; Lucy Stein, Progress Texas; John Burleson, Travis County Resistance; Dana Blanton; Karen Gentry; Nichole Miller; Whitney Peek; Maria Person)

On — Jonathan Huss, Department of State Health Services

BACKGROUND: 25 TAC, part 1, chap. 139, subch. A, sec. 139.4 requires abortion facilities to report on each abortion performed. The induced abortion report form includes a section to report complications of abortion.

After a complication of an abortion is discovered, sec. 139.5(3) requires a physician to report it within 30 days to the Department of State Health Services. The report must include information about the date and type of abortion that caused or may have caused the complication, information about the facility where the abortion was performed and the facility where the complication was diagnosed and treated, the number of weeks of gestation at which the abortion was performed, and the number of

previous live births and induced abortions of the patient.

DIGEST: HB 13 would establish certain requirements for physicians and health care facilities to report abortion complications. The reporting requirements would apply only to a physician who performed at an abortion facility an abortion that resulted in a complication diagnosed or treated by that physician or who diagnosed or treated at an abortion facility a complication that resulted from an abortion performed by another physician at the facility. The requirements also would apply to a health care facility that is a hospital, abortion facility, freestanding emergency medical care facility, or health care facility that provides emergency medical care.

The bill would define "abortion complication" to mean any harmful event or adverse outcome, including shock, uterine perforation, cervical laceration, hemorrhage, aspiration or allergic response, infection, sepsis, death of the patient, incomplete abortion, damage to the uterus, or an infant born alive after the abortion.

The bill would add a civil penalty of \$500 per violation for physicians or health care facilities that failed to comply with the reporting requirements. A third, separate violation would constitute cause for the revocation or suspension of a physician's license or health care facility's license, permit, registration, or certificate or for other disciplinary action against the physician or facility by the appropriate licensing agency.

A physician would be required to submit to the Health and Human Services Commission (HHSC) in a form and manner prescribed by rule a report on each abortion complication diagnosed or treated by that physician or at the abortion facility within 72 hours after the complication was diagnosed or treated. A health care facility would be required to submit electronically to HHSC a report on each abortion complication within 30 days after the complication was diagnosed or treated.

An abortion complication report could not identify the physician performing an abortion unless that physician had diagnosed or treated the complication. It could not identify the patient on whom the abortion was performed. The report would have to identify the name of the physician

submitting the report or the name and type of health care facility submitting the report. It would have to include, if known:

- the date and the type of abortion that caused or may have caused the complication;
- the gestational age of the fetus;
- the name and type of facility in which the abortion was performed;
- the date the complication was diagnosed or treated;
- the name and type of facility other than the reporting facility in which the complication was diagnosed or treated;
- a description of the complication;
- the patient's year of birth, race, marital status, and state and county of residence;
- the date of the first day of the patient's last menstrual period;
- the number of previous live births of the patient; and
- the number of previous induced abortions of the patient.

Information would be confidential and not subject to open records laws, except that it could be released for statistical purposes under certain conditions. The information could be released only with the consent of each person, patient, or facility identified in the information and to medical personnel, appropriate state agencies, or to county and district courts and appropriate state licensing boards for licensing enforcement purposes.

HHSC would be required to develop the reporting forms by January 1, 2018, and publish the form on the commission's website. The executive commissioner by rule could adopt procedures to reduce duplication in reporting abortion complications. HHSC would be required to adopt rules to implement the bill and establish an electronic reporting system as soon as practicable after the bill went into effect. The commission would be required to publish on its website an annual report that aggregated on a statewide basis each reported abortion complication for the previous calendar year.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect on the 91st day after the last day of the special session.

**SUPPORTERS
SAY:**

HB 13 would provide more complete and accurate disclosure of complications from abortions by requiring reports from abortion clinic physicians and hospitals and other health facilities where women had been treated for abortion-related complications. This data would provide better information about the strengths and weaknesses of Texas abortion laws, allowing legislative responses if necessary to protect the health and safety of women.

Current reporting laws may not cover patients with complications from an abortion who are treated in a hospital emergency room or other emergency facility. The bill would protect against double reporting of abortion complications by authorizing the Health and Human Services executive commissioner to adopt rules to reduce duplication in reporting from physicians at abortion clinics and hospital ERs.

The bill would address concerns that Texas is undercounting incidences of complications from abortion. In 2015, the state received reports of only 25 complications from 55,287 abortions performed in Texas that year. Studies of abortion complications in other jurisdictions indicate that complication rates in Texas should be higher than are being reported. If it turns out that the current rates of complications are supported by the new data, then Texas policymakers may be assured that abortions are being safely performed.

HB 13 would protect the privacy of women who experience complications from an abortion. The information would be confidential and could not be released except for statistical purposes, providing that a person, patient, or facility was not identified. In the event of future legal challenges, the bill would help ensure that the state had accurate data to support the need for any legislation the Legislature might deem necessary to protect the health and safety of women.

The bill would direct the Health and Human Services executive commissioner to provide reporting forms on its website, which would allow physicians to easily submit the required reports within the 72-hour deadline.

Rather than negatively impacting women who were seeking abortions, the bill would provide important information about physicians who might be performing the procedure in an unsafe manner. With regard to reporting complications from other medical procedures, separate legislation could address those procedures.

**OPPONENTS
SAY:**

HB 13 would mandate additional reporting on abortion complications that is not supported by scientific evidence or needed to improve women's health. By further stigmatizing a safe medical procedure, the bill would unnecessarily intrude in the doctor-patient relationship and could prevent Texas women from seeking follow-up care after an abortion.

The bill would result in duplication of data that already must be submitted to state health officials within 30 calendar days of discovery of the complication. By requiring reporting from both abortion facilities and emergency health care facilities, the bill could result in double counting of some complications.

HB 13 includes harsh penalties that eventually could result in physicians losing their licenses for failing to meet the strict 72-hour deadline for reporting. The forms could be used to identify physicians who perform abortions, subjecting them to potential targeting by abortion opponents.

The bill would single out one medical procedure for complications reporting even though many other more common medical procedures have higher rates of complications. If the goal is to improve patient safety, then the Legislature should require the same complication reporting requirement to other procedures performed in a clinic setting, such as colonoscopies or wisdom tooth removal.

NOTES:

A companion bill, SB 10 by Campbell, et al., was approved by the Senate on July 25.